



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/575,389

04/10/2006

Edward Dennis John

RD 448

9026

22884

7590

05/19/2010

MIDDLETON & REUTLINGER

2500 BROWN & WILLIAMSON TOWER

LOUISVILLE, KY 40202

EXAMINER

FELTON, MICHAEL J

ART UNIT

PAPER NUMBER

1791

MAIL DATE

DELIVERY MODE

05/19/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/575,389	Applicant(s) JOHN ET AL.	
	Examiner MICHAEL J. FELTON	Art Unit 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 and 50-95 is/are pending in the application.
- 4a) Of the above claim(s) 44-48 and 50-95 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-11, 13-15 and 17-44 is/are rejected.
- 7) ☒ Claim(s) 4, 12, and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>03/06/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 45-48 and 50-95 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 1/21/2010.

2. Applicant's election with traverse of claims 1-44 in the reply filed on 1/21/2010 is acknowledged. The traversal is on the ground(s) that claims 50-95 are different in scope only and relate to a single generally inventive concept. This is not found persuasive because the applicant has not responded to the reasoning applied in the restriction requirement. In particular, the restriction requirement is based on the determination that there is no special technical feature in common between the groups of elections. The claim amendments do not address the lack of special technical features between the inventions.

The requirement is still deemed proper and is therefore made FINAL.

3. The species election concerning the crosslinking agent (the applicant elected calcium sulphate) has been withdrawn. As a result, claims 6, 8, 9, 11, and 14 are no longer withdrawn.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 1791

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 5-11, 13-15, 17-29, 30- 42, and 44, are rejected under 35

U.S.C. 102(b) as being anticipated by Keritsis (US 4,333,484).

6. Regarding claims 1-3, 5-10, 13-15, 17-29, 31- 42, and 44, Keritsis discloses a foamed smokable filler composed of:

- a. hydroxypropyl cellulose (non-alginic foaming agent; col. 5-col. 6, all),
- b. alginic acid and their sodium, potassium ammonium, calcium and magnesium salts (non-foaming alginate capable of crosslinking),
- c. propylene glycol alginate (a foaming, an esterified alginate),
- d. calcium carbonate, chloride, acetate, lactate, citrate (citric acid salt) etc. (calcium chloride crosslinking agent, soluble in neutral solution, capable of forming alkaline solution, calcium carbonate is insoluble at neutral pH, sparingly soluble in acidic solutions; col. 5—col. 6, all; col. 9, 42-col. 12 all),
- e. Calcium salts in the amount of 0.5-15% by weight (acid salts) or 5-60% (carbonate, etc) (col. 5—col. 6, all.)
- f. glycerine (i.e. glycerol, 1-15% by wt., an aerosol forming agent; col. 7, 15-32),
- g. inorganic fillers, including alumina (col. 6, 65-68),
- h. flavor (chitosan) and colorants (caramel coloring, ~3%; col. 36),
- i. tobacco (20-80%; col. 41),

Art Unit: 1791

- j. carbonaceous materials (i.e. tobacco, alginate, hydroxypropyl cellulose, glycerine), and
 - k. binder (chitosan; col. 7, line 59—col. 8, All).
7. Regarding claim 30, Keritsis also discloses that the foam is dried to 10-20% moisture (claim 5).
8. Regarding claim 11, Keritsis discloses forming calcium hydroxide in situ, resulting in an invention containing calcium hydroxide (col. 9-col. 11, all).

Allowable Subject Matter

9. Claims 4, 12, and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
10. The following is a statement of reasons for the indication of allowable subject matter:
11. Concerning claim 4, 12, and 16, the prior art discloses a foam with the ingredients as claimed in claim 1. However, a foaming agent, which is an alginate and capable of forming chemical crosslinks is not disclosed by Keritsis in amounts from 30 to 95%, as Keritsis indicates using only 3-10% and does not suggest using additional foaming, crosslinkable alginates.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL J. FELTON whose telephone number is (571)272-4805. The examiner can normally be reached on Monday to Friday, 7:30 AM to 4:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Phillip C. Tucker can be reached on 571-272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J Felton/
Examiner, Art Unit 1791

/Philip C Tucker/

Supervisory Patent Examiner, Art Unit 1791